

Community Health Services, Inc. and Federation of Community Health Professionals, a/w Maine Federation of Teachers, Nurses and Health Professionals, AFT-AFL-CIO, Petitioner. Case 1-RC-17139

November 20, 1981

**DECISION ON REVIEW AND
CERTIFICATION OF
REPRESENTATIVE**

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

On April 3, 1981,¹ the Regional Director for Region 1 issued a Supplemental Decision, in which, *inter alia*, he overruled the challenges to the ballots of the Employer's 12 mental health workers (MHWs) finding them to be professional employees within the meaning of Section 2(12) of the Act.² Thereafter, the Employer filed a timely request for review of the Regional Director's Supplemental Decision contending, *inter alia*, that the 12 MHWs were improperly included in the professional unit as they are technical employees.

By telegraphic order dated June 26, the Employer's request for review was granted solely with respect to the Regional Director's disposition of the challenged ballots.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record in this proceeding and finds the following: The Employer is a provider of community health and home health care services, with offices in various communities in the State of Maine. The Petitioner seeks to represent all full-time and regular part-time professional employees employed by the Employer at its various locations, including MHWs. The Employer asserts that MHWs are technical employees who should be excluded from the unit.

The Employer employs 12 MHWs, who are classified in 4 grade levels, with Grade IV being the

highest level. One MHW is classified in Grade IV, four within Grade III, four within Grade II, and three within Grade I. For employment as a Grade I MHW—the entry level position—the Employer prefers, but does not require, that an employee have a bachelor's degree, although any employee lacking a degree must be working actively toward one. To be eligible for classification in Grades II and III, an MHW must possess a bachelor's degree and 1–2 and 2–3 years of paid, related experience, respectively. MHWs eligible for Grade IV must possess a bachelor's degree in the human services field and 3–4 years of paid, related experience. Of the 12 MHWs currently employed, 1 has a master's degree and 10 have bachelor's degrees. Most holders of bachelor's degrees majored in human services disciplines, such as psychology, social work, or sociology, although some MHWs hold degrees in music education, music, or English. MHWs with little or no prior experience or relevant education background receive on-the-job training. Additional in-service training programs are available to MHWs, although attendance is not mandatory.³ MHWs are not licensed by the State of Maine, nor are they registered or certified by any national or state professional organization.

MHWs (1) provide assistance to clients through counseling in problem solving, (2) determine whether clients may be in need of professional treatment and, if necessary, refer them to psychiatrists or psychologists, (3) plan and participate in group therapy sessions along with other employees of the Employer, and (4) confer with clients' psychiatrists and with public or private agencies with which clients may be involved. MHWs do not provide psychoanalysis or any form of mental health treatment which would be provided by a psychiatrist or psychologist. MHWs spend approximately 65 percent of their working time meeting with clients in their homes, and are not closely supervised through either direct observation of their counseling of clients or review of their reports and client records.

Based on the above facts, and noting in particular the Employer's education requirements for MHWs and their background, the Regional Director found that MHWs are professional employees under Section 2(12) of the Act. In its request for review, the Employer contends that the Regional Director has misapplied the Board's criteria for determining professional status,⁴ and that this case is

¹ Unless otherwise noted, all dates hereinafter are in 1981.

² On February 6, the Acting Regional Director for Region 1 issued a Decision and Direction of Election in this proceeding, directing an election among all of the Employer's professional employees including MHWs. Thereafter, the Employer filed a timely request for review on the grounds, *inter alia*, that the Acting Regional Director erred in finding that MHWs are professional employees. By telegraphic order dated March 2, the Board denied the Employer's request for review but amended the Decision and Direction of Election to permit MHWs to vote subject to challenge.

On March 6, the election was conducted, and the tally of ballots shows that the Petitioner received 27 votes, 23 votes were cast against the Petitioner, and 12 ballots (cast by MHWs) were challenged. Thereafter, on March 13, the Employer filed timely objections to the election which were overruled by the Regional Director in his Supplemental Decision.

³ The in-service education programs include periodic lectures, monthly group meetings where employees discuss their work among themselves, and partial tuition reimbursement for job-related courses.

⁴ Sec. 2(12)(a) of the Act defines "professional employee" as:

Continued

governed by the Board's decision in *Butler Hospital*,⁵ wherein the Board found mental health workers to be technical employees. Here, as in *Butler*, entry-level mental health workers are only encouraged, not required, to possess a bachelor's degree as a condition of employment, and there is no requirement that mental health workers holding such degrees have had academic training in an employment-related discipline. In fact, a number of the Employer's MHWs possess degrees in subjects totally unrelated to employment duties. New employees here and in *Butler* receive on-the-job and in-service training; indeed, the 3- to 4-month orientation program required for new employees in *Butler* appears to be more extensive than that required by the Employer here. In neither case does the Employer require its mental health workers to be licensed or certified. Moreover, the Employer's MHWs perform duties virtually identical to those performed by *Butler Hospital's* mental health workers. They "observe, report and record the [client's] behavior, activity, and his physical and emotional condition . . . [and] develop therapeutic interpersonal relationships with [clients] by engaging the [client] in therapeutic discussion."⁶ In addition, they assist professional staff in obtaining information from the client, but do not engage in psychotherapy or other types of treatment normally performed by professional psychologists or psychiatrists. Therefore, in terms of their academic qualifications, training, lack of licensure or certification, and duties, the Employer's MHWs are indistin-

guishable from the mental health workers in *Butler*, whom we found to be technical employees.⁷

Accordingly, we shall exclude MHWs from the unit of professional employees and sustain the challenges to their ballots. As the tally shows that the Petitioner received a majority of the valid ballots cast, we shall issue the following certification.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Federation of Community Health Professionals, a/w Maine Federation of Teachers, Nurses and Health Professionals, AFT-AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time professional employees employed by the Employer at its various locations within the State of Maine, including registered nurses, graduate nurses, physical therapists and occupational therapists, but excluding all other employees, licensed practical nurses, VD epidemiologists, outreach workers, home health aides, mental health workers, office clerical employees, guards and supervisors as defined in the Act.

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes

⁵ 250 NLRB 1310 (1980).

⁶ *Id.* at 1310-11.

⁷ The Acting Regional Director, in his Decision and Direction of Election, considered the Employer's contention that *Butler* was controlling but found it distinguishable in that here, unlike *Butler*, (1) all MHWs above the entry-level position are required to hold college degrees, (2) most MHWs possessed degrees in the human service field, and (3) MHWs appear to receive less supervision and exercise greater discretion and independent judgment in the performance of their work. However, the record indicates that the duties and jobfunctions of the MHWs here and in *Butler* and the manner in which they are performed are substantially the same. Moreover, although the Employer requires a bachelor's degree for MHW II, III, and IV, such degree does not have to be specialized. Besides, the possession of a college degree does not necessarily establish professional status (see *Binghamton Press Company, Inc.*, 226 NLRB 808, 809-810 (1976)). Accordingly, we find that these factors are insufficient to establish that the Employer's MHWs are professional employees.